

A

KALIAMMAL SINNASAMY

v.

**MAJLIS AGAMA ISLAM WILAYAH PERSEKUTUAN
(JAWI) & ORS**

B

COURT OF APPEAL, PUTRAJAYA
ZAINUN ALI JCA
ABDUL WAHAB PATAIL JCA
CLEMENT SKINNER JCA

C

[CIVIL APPEAL NO: W-01-5-2006]
20 AUGUST 2010

D

CIVIL PROCEDURE: *Jurisdiction - Matters relating to Islamic religion - Wife of deceased seeking declarations that deceased a Hindu at time of death and his conversion to Islam void - Syariah Court order stating that deceased a Muslim - Jurisdiction of High Court to adjudicate upon matter - Syariah Court the court of competent jurisdiction in deciding status of a person as a Muslim - Order of court of competent jurisdiction - Appearance of parties before Syariah Court - Person who is not subject to compulsive authority of Syariah Court not precluded from seeking relief in Syariah Court - Federal Constitution, art. 121(1A)*

E

F

CIVIL PROCEDURE: *Jurisdiction - Conflict of jurisdiction between High Court and Syariah Court - Wife of deceased seeking declarations that deceased a Hindu at time of death and his conversion to Islam void - Syariah Court order stating that deceased a Muslim - Jurisdiction of High Court to adjudicate upon matter - Syariah Court the court of competent jurisdiction in deciding status of a person as a Muslim - Order of court of competent jurisdiction - Appearance of parties before Syariah Court - Person who is not subject to compulsive authority of Syariah Court not precluded from seeking relief in Syariah Court - Federal Constitution, art. 121(1A)*

G

H

I

CONSTITUTIONAL LAW: *Courts - Jurisdiction - Matters relating to Islamic religion - Wife of deceased seeking declarations that deceased a Hindu at time of death and his conversion to Islam void - Syariah Court order stating that deceased a Muslim - Jurisdiction of High Court to adjudicate upon matter - Syariah Court the court of competent jurisdiction in deciding status of a person as a Muslim - Order of court of competent jurisdiction - Appearance of parties before Syariah Court - Person who is not subject to compulsive authority of Syariah Court not precluded from seeking relief in Syariah Court - Federal Constitution, art. 121(1A)*

ISLAMIC LAW: *Jurisdiction - High Court and Syariah Court, conflict of jurisdiction - Wife of deceased seeking declarations that deceased a Hindu at time of death and his conversion to Islam void - Syariah Court order stating that deceased a Muslim - Jurisdiction of High Court to adjudicate upon matter - Syariah Court the court of competent jurisdiction in deciding status of a person as a Muslim - Order of court of competent jurisdiction - Appearance of parties before Syariah Court - Person who is not subject to compulsive authority of Syariah Court not precluded from seeking relief in Syariah Court - Federal Constitution, art. 121(1A)*

The appellant, the wife of the deceased, sought declarations in the High Court that, *inter alia*, she was the deceased's valid wife, the deceased was a Hindu at the time of his death and all documents of the deceased's conversion to the Islamic religion were void. At the High Court hearing, the 1st respondent produced an *ex parte* order from the Syariah High Court stating that the deceased was a Muslim who must be buried according to Islamic law and that his body was to be handed over to the 1st respondent. The High Court judge granted the appellant's prayer that she was the deceased's lawful wife, but dismissed the appellant's other prayers on the ground that the High Court had no jurisdiction in the matter as it concerned the religion of Islam which was within the Syariah Court's jurisdiction. The issue before this court was whether the High Court judge had erred in dismissing the appellant's application for a declaration that the deceased was a Hindu and not a Muslim, upon the production of the Syariah High Court's order. The appellant submitted, *inter alia*, that: (i) by ordering as he did, the High Court judge abrogated the powers of the civil court to the Syariah Court; (ii) it was not established that the Syariah High Court had jurisdiction in this case because it was not known whether the deceased was a Muslim in the first place; and (iii) the 1st respondent was not a legal person and its appearance before the Syariah High Court was a nullity.

Held (dismissing the appeal)

Per Abdul Wahab Patail JCA delivering the judgment of the court:

- (1) When giving effect to art. 121(1A) of the Federal Constitution ('FC') the High Court should first decide whether it has jurisdiction *ie*, whether the matter before it is a matter in respect of which jurisdiction has been conferred on the Syariah Court. Once the High Court determines that the matter is

- A within the jurisdiction of the Syariah Court, it should then decline to adjudicate further upon the matter. This was clearly the approach taken by the High Court judge in this case. It certainly could not be said that by going through that process and deciding that he had no jurisdiction in matters relating to
- B the deceased's status as a Muslim, the High Court had abrogated its powers to the Syariah Court. (paras 9-11)
- (2) A Syariah High Court has the power to hear and decide to make a declaration as to the status of a person as a Muslim. It is the court of competent jurisdiction for that purpose.
- C Where a question arises as to whether a person is Muslim, the legislature has by art. 121(1A) of the FC placed the determination of this question in the Syariah High Court's sole jurisdiction. *Dalip Kaur Gurbux Singh v. Pegawai Polis Daerah (OCPD), Bukit Mertajam & Anor* (foll); *Soon Singh Bikar Singh v. Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor* (foll); *Lina Joy lwn. Majlis Agama Islam Wilayah Persekutuan & Yang Lain* (foll); *Ng Wan Chan v. Majlis Ugama Islam Wilayah Persekutuan & Anor* (ovrd). (paras 12 & 15)
- D
- E (3) It is not for a civil court to go behind an order of a court of competent jurisdiction to question the merits of the matter decided upon by that court. Therefore, in the present instance, it was not for the civil court to look behind the order to see whether the Syariah High Court had acted correctly and to interfere with its decision. *Nor Kursiah Baharuddin v. Shahril Lamin* (foll); *Kamariah Ali lwn. Kerajaan Negeri Kelantan, Malaysia & Satu Lagi dan Rayuan Yang Lain* (foll). (para 13)
- F
- G (4) Apart from the fact that the appellant had made the 1st respondent a party in her application, the issue of the 1st respondent being a party and appearing before the Syariah High Court was a matter within the jurisdiction of that court. It was not for the civil court to determine who may appear
- H before the Syariah High Court in matters within the Syariah High Court's jurisdiction. (para 17)
- (5) The fact that a person who seeks relief in a Syariah Court may not be a person who is subject to the compulsive authority of the Syariah Court would not preclude such a person from trying to obtain relief in the Syariah Court. In this case, the appellant was not prevented from applying to
- I

the Syariah Court to try to set aside the *ex parte* order it made, giving the court occasion to address the relevant issue(s) concerned and deliver a fair and just decision in accordance with the religion and laws of Islam. (para 21)

A

Bahasa Malaysia Translation Of Headnotes

B

Perayu, isteri si mati, menuntut deklaras-deklaras di dalam Mahkamah Tinggi bahawa, antara lain, beliau adalah isteri sah si mati, si mati adalah seorang Hindu pada masa kematiannya dan semua dokumen-dokumen pemelukan agama Islam si mati tidak sah. Di perbicaraan Mahkamah Tinggi, responden pertama mengemukakan perintah *ex parte* dari Mahkamah Tinggi Syariah yang menyatakan bahawa si mati adalah seorang Muslim yang mesti dikebumikan mengikuti undang-undang Islam dan bahawa jasadnya seharusnya diberikan kepada responden pertama. Hakim Mahkamah Tinggi membenarkan tuntutan perayu bahawa beliau adalah isteri sah si mati, tetapi menolak tuntutan-tuntutan lain perayu atas alasan bahawa Mahkamah Tinggi tidak mempunyai bidangkuasa dalam perkara tersebut kerana ia melibatkan agama Islam yang berada di dalam bidangkuasa Mahkamah Syariah. Isu di hadapan mahkamah ini adalah sama ada hakim Mahkamah Tinggi telah khilaf dalam menolak permohonan perayu untuk deklaras bahawa si mati adalah seorang Hindu dan bukan Muslim, selepas perintah Mahkamah Tinggi Syariah dikemukakan. Perayu menghujah, antara lain, bahawa: (i) dengan mengarahkan seperti yang beliau buat, hakim Mahkamah Tinggi telah memansuhkan kuasa-kuasa mahkamah sivil kepada Mahkamah Syariah; (ii) ia tidak dibuktikan bahawa Mahkamah Tinggi Syariah mempunyai bidangkuasa dalam kes ini kerana ia tidak diketahui sama ada si mati adalah pertama sekali seorang Muslim; dan (iii) responden pertama bukan orang yang sah di sisi undang-undang dan kehadirannya di depan Mahkamah Tinggi Syariah merupakan suatu pembatalan.

C

D

E

F

G

Diputuskan (menolak rayuan)

Oleh Abdul Wahab Patail HMR menyampaikan penghakiman mahkamah:

H

- (1) Apabila memberikan kesan kepada Perkara 121(1A) Perlembagaan Persekutuan ('PP') Mahkamah Tinggi mesti pertama sekali memutuskan sama ada ia mempunyai bidangkuasa, iaitu, sama ada perkara di depannya adalah suatu perkara di mana bidangkuasa telah diberikan kepada Mahkamah Syariah. Setelah Mahkamah Tinggi menentukan

I

- A bahawa perkara tersebut berada dalam bidangkuasa Mahkamah Syariah, ia sepatutnya tidak menghakimi seterusnya atas perkara tersebut. Ini jelasnya jalan yang diambil oleh hakim Mahkamah Tinggi di dalam kes ini. Ia semestinya tidak boleh dikatakan bahawa dengan menjalani proses itu dan menentukan
- B yang beliau tidak mempunyai bidangkuasa dalam perkara berhubungan dengan status si mati sebagai seorang Muslim, Mahkamah Tinggi telah memansuhkan kuasa-kuasanya kepada Mahkamah Syariah.
- C (2) Sebuah Mahkamah Tinggi Syariah mempunyai kuasa untuk mendengar dan memutuskan untuk membuat deklarasi mengenai status seseorang sebagai seorang Muslim. Ia adalah mahkamah berbidangkuasa kompeten bagi tujuan itu. Di mana
- D soalan timbul mengenai sama ada seseorang itu seorang Muslim, badan perundangan telah melalui Perkara 121(1A) PP meletakkan penentuan soalan ini dalam bidangkuasa tunggal Mahkamah Tinggi Syariah. *Dalip Kaur Gurbux Singh v. Pegawai Polis Daerah (OCPD), Bukit Mertajam & Anor* (diikuti); *Soon Singh Bikar Singh v. Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor* (diikuti); *Lina Joy lwn. Majlis Agama Islam Wilayah Persekutuan & Yang Lain* (diikuti); *Ng Wan Chan v. Majlis Ugama Islam Wilayah Persekutuan & Anor* (dibatalkan).
- E (3) Sebuah mahkamah sivil tidak boleh menimbangkan perintah sebuah mahkamah berbidangkuasa kompeten untuk
- F menyoalkan merit perkara yang diputuskan oleh mahkamah itu. Oleh itu, dalam kes semasa, mahkamah sivil tidak boleh menimbangkan perintah untuk melihat sama ada Mahkamah Tinggi Syariah telah bertindak dengan betul dan untuk mencampurtangan dengan keputusannya. *Nor Kursiah Baharuddin v. Shahril Lamin* (diikuti); *Kamariah Ali lwn. Kerajaan Negeri Kelantan, Malaysia & Satu Lagi dan Rayuan Yang Lain* (diikuti).
- G (4) Selain dari hakikat yang perayu telah menjadikan responden pertama sebagai pihak dalam permohonannya, isu responden pertama menjadi pihak dan menghadiri di depan Mahkamah Tinggi Syariah adalah satu perkara yang berada di dalam bidangkuasa mahkamah tersebut. Mahkamah sivil tidak boleh menentukan siapa yang hadir di hadapan Mahkamah Tinggi
- H Syariah dalam perkara-perkara yang berada di dalam bidangkuasa Mahkamah Tinggi Syariah.
- I

- (5) Hakikat bahawa seorang yang menuntut relief di dalam Mahkamah Syariah mungkin bukan seorang yang tertakluk kepada kuasa wajib Mahkamah Syariah tidak mengecualikan orang itu dari cuba memperolehi relief di dalam Mahkamah Syariah. Dalam kes ini, perayu tidak dihalang dari memohon ke Mahkamah Syariah untuk cuba mengenyahkan perintah *ex parte* yang dibuat olehnya, memberikan mahkamah sebab untuk menimbangkan isu-isu yang relevan dan menyampaikan keputusan yang adil dan saksama menurut agama dan undang-undang Islam.

A

B

C

Case(s) referred to:

Dalip Kaur Gurbux Singh v. Pegawai Polis Daerah (OCPD), Bukit Mertajam & Anor [1991] 3 CLJ 2768; [1991] 1 CLJ (Rep) 77 SC (**foli**)

Kamariah Ali lwn. Kerajaan Negeri Kelantan, Malaysia & Satu Lagi dan Rayuan Yang Lain [2002] 3 CLJ 766 CA (**foli**)

Lina Joy lwn. Majlis Agama Islam Wilayah Persekutuan & Yang Lain [2007] 3 CLJ 557 FC (**foli**)

D

Manokaram Subramaniam v. Ranjid Kaur Nata Singh [2008] 6 CLJ 209 FC (**refd**)

Ng Wan Chan v. Majlis Ugama Islam Wilayah Persekutuan & Anor [1991] 2 CLJ 1559; [1991] 3 CLJ (Rep) 328 HC (**ovrd**)

E

Nor Kursiah Baharuddin v. Shahril Lamin & Anor [1997] 1 CLJ Supp 599 HC (**foli**)

Soon Singh Bikar Singh v. Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor [1999] 2 CLJ 5 FC (**foli**)

Legislation referred to:

F

Federal Constitution, art. 121(1A)

For the appellant - M Manoharan (A Sivanesan, M Kulasegaran & A Magesan with him); M/s MA Sivanesan & Co

For the 1st respondent - Hj Sulaiman Abdullah (Fakhrul Azman Abu Hasan with him); M/s Azaine & Fakhrul

G

For the 2nd & 3rd respondents - Mahamad Naser Disa (Arik Sanusi Yeop Johari, Munahyza Mustafa & Andi Razalijaya A Dadi with him)

[Appeal from High Court, Kuala Lumpur; Suit No: R1-24-102-2005]

[Editor's note: For the High Court judgment, please see *Kaliammal Sinnasamy lwn. Pengarah Jabatan Agama Islam Wilayah Persekutuan & Yang Lain* [2006] 1 CLJ 753.]

H

Reported by Suresh Nathan

I

JUDGMENT

Abdul Wahab Patail JCA:

A [1] We adjourned this appeal for decision today so that time is
B given us to fully appreciate the issues raised by all parties. Thus
we now give our grounds.

C [2] The appellant herein, Kaliammal a/p Sinnasamy (the
appellant) is the wife of Moorthy a/l Maniam deceased (“the
deceased”) who died on 20 December 2005. On the very next
day ie, on 21 December 2005, the appellant, applied by originating
summons in the High Court in Kuala Lumpur, for the following
orders:

- D** (a) A declaration that the applicant is the valid wife to Moorthy
a/l Maniam (“the deceased”);
- (b) A declaration that the deceased is a Hindu and follows the
custom and Hindu religion before his death;
- E** (c) A declaration that the deceased is not a Muslim on the date
of his death;
- (d) A declaration that all documents of conversion of the deceased
to the Islamic religion is not valid and void;
- F** (e) An order directing the 2nd respondent and/or the Kuala
Lumpur General Hospital by itself and/or by their agent and/
or by their workers and/or by their representative to release
the deceased’s body immediately to the applicant for burial
purposes;
- G** (f) An injunction order forbidding the 1st respondent from taking
and claiming the deceased’s body in any way whatsoever from
the 2nd respondent;
- H** (g) An interim injunction order forbidding the 1st respondent from
taking and/or claiming the deceased’s body from the 2nd
respondent and/or to restrain the 1st respondent from claiming
the deceased’s body in any way whatsoever from the 2nd
respondent until the final decision of the court.

I [3] The appellant’s application above was heard on 22 December
2005 by the learned High Court judge.

[4] At that hearing before the learned judge in the High Court, the 1st respondent produced an *ex parte* order that it had sought and obtained from the Syariah High Court in Kuala Lumpur the previous day. The said Order reads: A

That 1. Mohammad b. Abdullah @ Moorthy a/l Maniam (the deceased) No. KP T1074385 is a Muslim; B

2. Mohammad b. Abdullah @ Moorthy a/l Maniam No. KP T1074385 is to be buried in accordance with Islamic law; C

3. Persons or authorities having custody of the body of (the deceased) Mohammad b. Abdullah @ Moorthy a/l Maniam No. KP T1074385 deceased, are required to hand over the body of the deceased to the 1st respondent. D

[5] The High Court in Kuala Lumpur granted the appellant's first prayer that she is the lawful wife of the deceased. However the learned judge dismissed the other prayers in the appellant's application, on the grounds that the High Court has no jurisdiction in the matter as it concerned the religion of Islam which are matters within the jurisdiction of the Syariah Court. E

[6] Before us, counsel for the appellant, Mr. M. Manoharan's submission can be summarised mainly as follows, that:

(i) the appellant asks for the matter to be sent back to the High Court to be heard on the merits; F

(ii) the High Court did not hear the matter on the merits;

(iii) the High Court judge had dismissed the matter on grounds that he has no jurisdiction to deal with it; G

(iv) the learned judge had erred because he had relied on the order of the Syariah Court declaring the deceased to be a Muslim; H

(v) that the 1st respondent had acted *mala fide* in seeking the said order *ex parte*; I

The appellant took the position that the Syariah Court was not seised with jurisdiction to determine the religious status of the deceased;

- A (vi) the 1st respondent had no *locus standi* to claim the deceased's body;
- (vii) the appellant wanted the High Court to determine the religious status of the deceased, that he was a Hindu and not a Muslim; where
- B (viii) the appellant produced the deceased's identity document, certificate of marriage on 25 November 1995 and affidavits of the appellant, the affidavit of Chandiran a/l Periasamy, a friend and the affidavit of Tenmuli a/p Maniam, the deceased's sister; which all confirmed that the deceased was at all times a practicing Hindu;
- C (ix) there was no evidence or document produced by the respondents in the High Court to show that the deceased was a Muslim;
- D (x) the appellant was at all material times a Hindu, a non-Muslim, who has no locus to seek remedy in the Syariah Court to determine the status of her husband;
- E (xi) she has the right to be heard in the civil courts and that the respondents should not ask that she submit to their jurisdiction in the Syariah Court;
- F (xii) although Mejar Shukri bin Hj. Yahya said the deceased had converted to the religion of Islam, there is no affidavit from him to that effect;
- (xiii) before he died the deceased was in a coma, but the deceased was claimed by the 1st respondent, to have converted in November, and that the appellant was informed in December;
- G (xiv) the declaration of the Syariah High Court was made after the deceased died;
- H (xv) the appellant relies heavily on *Ng Wan Chan v. Majlis Ugama Islam Wilayah Persekutuan & Anor* [1991] 2 CLJ 1559; [1991] 3 CLJ (Rep) 328.
- I [7] The issue placed before this court is whether the learned High Court judge had erred in dismissing the appellant's application for a declaration that the deceased was a Hindu and not a Muslim upon the production of the Order of the Syariah High Court.

[8] Before deciding this issue we wish to address a submission made by the appellant to the effect that by making the orders that he did, the learned judge had abrogated the powers of the Civil Court to the Syariah Court. We do not agree. The contention of the appellant brings into sharp focus what the Civil High Court should do when faced with an application such as this. Does it shy away from dealing with the matter merely on account of the presence of elements pertaining to Islam or Muslims? In our judgment it should not do so.

A

B

[9] In our view when giving effect to art. 121(1A) the High Court should first decide whether it has jurisdiction ie, whether the matter before it is a matter in respect of which jurisdiction has been conferred on the Syariah Court whether by State or Federal law.

C

[10] Once the Civil High Court determines and decides that the matter is within the jurisdiction of the Syariah Court, the Civil High Court should then decline to adjudicate further on the matter.

D

[11] This was clearly the approach taken by the learned High Court judge in this case. After setting out the case for the appellant extensively and citing several authorities the learned judge concluded:

E

... 18. Di Wilayah Persekutuan terdapat peruntukan yang nyata dalam Akta Pentadbiran Undang-Undang Islam (Wilayah-Wilayah Persekutuan) 1993 (Akta 505) mengenai isu pemelukan agama Islam. Bahagian IX Akta 505 menghuraikan dengan jelas prosedur pemelukan Islam. Oleh itu, sudah tentu Mahkamah yang mempunyai bidangkuasa dan kompeten untuk menentukan apa-apa perkara yang timbul di dalam Akta 505, seperti kesahan pemelukan seseorang itu ke agama Islam adalah Mahkamah Syariah dan bukan Mahkamah Sivil. Ini adalah selari dengan Perkara 121(1A) Perlembagaan Persekutuan yang memperuntukkan bahawa Mahkamah Sivil tidak mempunyai bidangkuasa berkenaan dengan apa-apa perkara di mana Mahkamah Syariah mempunyai bidangkuasa yang diberikan di bawah undang-undang bertulis.

F

G

H

19. Saya juga berpendapat bahawa walaupun pemohon melalui affidavit-affidavit yang difailkan cuba menunjukkan bahawa simati dalam tempoh yang dikatakan simati telah memeluk agama Islam, telah mengambil bahagian dalam upacara keagamaan Hindu, dan melakukan perkara yang bertentangan dengan agama Islam atau tidak melakukan perkara seperti yang sepatutnya dilakukan oleh orang Islam, tetapi perkara-perkara tersebut adalah persoalan

I

- A mengenai undang-undang Islam. Sekali lagi bidangkuasa untuk menentukan perkara-perkara seperti itu adalah Mahkamah Syariah dan bukan Mahkamah Sivil.

B It certainly cannot be said, as the appellant has tried to say, that by going through that process and deciding that he had no jurisdiction in matters relating to the deceased's status as a Muslim, the High Court had abrogated its powers to the Syariah Court.

C [12] Reverting to the issue at hand, a Syariah High Court has the power to hear and decide to make a declaration as to the status of a person as a Muslim. It is the court of competent jurisdiction for that purpose. This is established in *Dalip Kaur Gurbux Singh v. Pegawai Polis Daerah (OCPD), Bukit Mertajam & Anor* [1991] 1 CLJ 77 (Rep), [1991] 3 CLJ 2768 SC; *Soon Singh Bikar Singh v. Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah & Anor* [1999] 2 CLJ 5 FC; *Lina Joy lwn. Majlis Agama Islam Wilayah Persekutuan & Yang Lain* [2007] 3 CLJ 557 FC. In the light of these cases, *Ng Wan Chan (supra)* is no longer authority.

E [13] As held in *Nor Kursiah Baharuddin v. Shahril Lamin & Anor* [1997] 1 CLJ Supp 599 HC and approved in *Kamariah Ali lwn. Kerajaan Negeri Kelantan, Malaysia & Satu Lagi dan Rayuan Yang Lain* [2002] 3 CLJ 766 CA, it is not for the civil court to go behind that order of the court of competent jurisdiction to question the merits of the matter decided upon by that court. It is therefore not for the civil court to look behind the order and say whether the Syariah High Court acted correctly or not and to interfere with its decision.

G [14] It was submitted before us that it is not established that the Syariah High Court had jurisdiction in this case because it is not known whether the deceased in this case was a Muslim or not in the first place.

H [15] Where a question arises whether a person is a Muslim or not, it is not a foregone conclusion that he is a Muslim – but it is our view that the legislature has by art. 121(1A) of the Federal Constitution of Malaysia placed the determination of this question in the sole jurisdiction of the Syariah High Court. It is for an obvious and practical reason. The religious authority of a particular religion is better placed to consider and decide whether a person

I

belongs and continues to adhere to that religion. We should point out that the judgment of Mohd Yusoff Mohamed SCJ in *Dalip Kaur* stated that En. Karpal Singh counsel for the appellant therein conceded at the end of his argument before the Supreme Court that our civil court is not qualified to determine the question in issue, which is, whether a person is a Muslim or not. Indeed if the issue is whether a person belongs to one non-Muslim religion and not another, and the particular religion has no recognised religious authority, a civil court necessarily relies on expert testimony. But in respect of the religion of Islam in Malaysia, no matter how the question is drafted and put, it remains the current law that the question whether a person is a Muslim or not is, as held in the foregoing cases, a question for the Syariah Court to determine.

A

B

C

[16] In the light of art. 121(1A) the jurisdiction that remains in the Civil Court is stated thus by Hashim Yeop Sani CJ (Malaya) in *Dalip Kaur*:

D

The new clause 1A of Article 121 of the Constitution effective from 10 June 1988 has taken away the jurisdiction of the civil courts in respect of matters within the jurisdiction of the Syariah Courts. But that clause does not take away the jurisdiction of the civil court to interpret any written laws of the States enacted for the administration of Muslim law.

E

[17] It was submitted that the 1st respondent is not a legal person and its appearance before the Syariah High Court is a nullity. Apart from the fact that the appellant had made it a party in her application, whether the 1st respondent can be party and may appear before the Syariah High Court is a matter within the jurisdiction of the said court. It is not for the civil court to determine who may or may not appear before the Syariah High Court in matters within its jurisdiction.

F

G

[18] We are not unmindful of the question of what is the course available to a spouse who, at a time of deep grief is informed that her deceased husband had converted to another religion. For a start it raises question of who is in charge of funeral arrangements. Ultimately it adds complications to rights to his estate. It also raises the question that she needs to verify if it is true he had so converted. In this case it is the Syariah High Court who determines whether the deceased was a Muslim. These questions become emotive because of the assumption that she had no access to that court to be heard on that issue.

H

I

- A [19] The assumption that a non-Muslim is barred from suing in the Syariah Court, arises from the provision that the Syariah Court has no jurisdiction over non-Muslims. Whether this assumption stands up to scrutiny turns upon Item 1 List II of the Federal Constitution which states as follows:
- B ... the constitution, organisation and procedure of Syariah Courts which shall have jurisdiction only over persons professing the religion of Islam and in respect only of any of the matters included in this paragraph
- C [20] The question of jurisdiction however relates to the power of the court to exercise compulsive authority over **a person** or on a **subject matter**. (emphasis added).
- D [21] The fact that a person who seeks relief in a Syariah Court may not be a person who is subject to the compulsive authority of the Syariah Court would not, in our view, preclude such person from going to the Syariah Court to try to obtain relief. In this case the appellant is not prevented from applying to the Syariah Court to try to set aside the *ex parte* Order made by it,
- E giving the said court occasion to address the relevant issue concerned and deliver a fair and just decision in accordance with the religion of Islam and Islamic law.
- F [22] To our minds in a dual judicial system anywhere, there will always occur occasions when there appear to be dissonance between the two systems. The civil court seeks to resolve such dissonance where possible by applying an interpretation so that there is no conflict, or to ensure that the grievances be first brought before the court of competent jurisdiction to consider a rule upon it. It is not the proper course to reject the court of
- G competent jurisdiction and instead go to the Civil Court. Then if the dissonance proves irreconcilable, it is the intent of the Federal Constitution that it is for the legislature to provide the remedy: see *Manokaram Subramaniam v. Ranjid Kaur Nata Singh* [2008] 6 CLJ 209 FC.
- H [23] For the foregoing reasons, we dismiss this appeal and confirm the decision of the High Court. We make no order as to cost as Deposit is refunded to the appellant.

I
